IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

ORDER.

Dana Ram & ors. vs. Union of India & ors.

S.B.Civil Writ Petition No.4773/2005 under Article 226 of the Constitution of India.

Date of Order : October 22, 2005.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Mr. M.S. Singhvi for the petitioners.
Mr. V.K. Mathur, for non-petitioner no.1
Mrs. R.R. Kanwar, Deputy Govt. Advocate.

BY THE COURT:

Brief facts of the case are that the Central Government framed a programme known as "Hariyali Scheme" and published principles for implementation of Hariyali Scheme, copy of which is placed on record as Annexure-1. One of the projects to be undertaken by the Central Government in collaboration with the State Government is Water Shed Projects. By communication dated 1.11.2004, the Central Government sanctioned Water Shed Project for the State of Rajasthan covering 16 districts, copy of which is placed on record as Annexure-2 by the petitioners. As per the terms and conditions of the scheme, the District Water Shed Development Committee held a meeting on 4.3.2005 and identified and sanctioned the project which was required to be

undertaken under the Hariyali Scheme. In this sanction, a scheme was also sanctioned for Nokha Tehsil. The copy of the minutes of the meeting dated 4.3.2004 is also placed on record as Annexure-3. The proceedings of the meeting dated 4.3.2005 were approved by the Zila Parishad, Bikaner in its general meeting dated 5.3.2005, copy of which is placed on record as Annexure-4. According to the petitioners, this meeting was attended by Shri Govind Ram Chouhan (Meghwal) as an Ex-Officio Member. The Zila Parishad, Bikaner granted administrative sanction for carrying out the project in accordance with the decision taken on 4.3.2005 and for this purpose a sanction letter was issued on 23.3.2005 (Annexure-5). On 23.3.2005 itself, said Shri Govind Ram Chouhan, who attended the meeting of the Zila Parishad on 5.3.2005, raised objection by sending letter to the Principal Secretary, Rural Development and Panchayati Raj Department , upon which the Principal Secretary, Rural Development and Panchayati Raj Department of the State stayed the sanction granted by the Zila Parishad and directed the Collector, Bikaner to held an enquiry into the matter. Copy of the letter of the said Principal Secretary is also placed on record as Annexure-7. The Collector, Bikaner in turn, by communication dated 28.3.2005 directed the Chief Executive Officer to submit comments to the Secretary, Panchayati Raj Department, who vide letter dated 2.4.2005 submitted the comments stating therein that no irregularity has been

committed in sanctioning the project. Copy of the communication dated 2.4.2005 is placed on record as Annexure-9. Despite receipt of the report about no irregularity in sanctioning the project, the State Government did not revoke the ban imposed by the State Government for carrying out the projects identified by the competent agency. According to the petitioners, the complaint itself was raised because of the political rivalry only and on the basis of such complaint, the project was stayed by the State Government. Therefore, the petitioner submitted this writ petition for quashing the order dated 24.3.2005 and with further prayer for implementation of the Water Shed Projects sanctioned in the meeting of the committee dated 4.3.2005 as approved by the Zila Parishad on 5.3.2005.

This Court issued notice of the writ petition to the respondents after taking note of the facts of the writ petition by order dated 14.8.2005. In reply itself, the facts alleged in para no.1 to 12 have been admitted by the respondents. However, in para no.13 of the reply, it is stated that the Deputy Secretary passed an order on 25.8.2005 and nominated three persons named in the order dated 25.8.2005 for the Water Shed Development Committee and now the meeting will be called immediately and thereafter the sanction order would be passed.

According to the learned counsel for the petitioners, the State has passed the order dated 25.8.2005 during the pendency of this writ petition and nominated three members for the committee which is also wholly without jurisdiction as no such nomination is permissible under the Hariyali scheme. It is also submitted that so far as the claim of the petitioners is concerned for implementation of the scheme, it has not been denied and the report is in favour of the petitioners that the complaint was frivolous one and the committee was constituted properly, therefore, the writ petition of the petitioners deserves to be allowed.

The learned counsel appearing on behalf of the State submitted that the persons have been nominated by the order dated 25.8.2005 because as per clause 41 of the Hariyali Scheme, the project can be evaluated and examined with the help of the independent persons and, therefore, these persons have been nominated by the State.

I considered the submissions of the learned counsel for the parties and perused the relevant documents also. It is clear that on facts the contentions submitted by petitioners have been accepted by the respondents in the reply. So far as nomination of the persons by order dated 25.8.2005 is concerned, it is clear that the scheme can be

evaluated and examined with the help of the independent persons but for the purpose of implementation of the scheme, the entire procedure has been given in the Hariyali Scheme itself and the State has not been given power to nominate the members in the committee as done in this case, therefore, the State could not have nominated the persons for the purpose of implementing the scheme. Hence the order dated 25.8.2005 is illegal.

So far as constitution of the committee is concerned, factually there is no objection and after the report which has already been submitted and placed on record, nothing survives against the petitioners and the order of the State Government dated 24.3.2005 (Annexure-7) should have been withdrawn by the State Government after receipt of the report through the Collector concerned so that the project could have been implemented immediately.

The writ petition of the petitioners is, therefore, allowed in the terms as mentioned above and the orders of the State Government dated 24.3.2005(Annexure-7) and 25.8.2005(Annexure-R/1) are set aside.

(PRAKASH TATIA),J.

mlt.